

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.4140 of 2005

Date of decision : 13.02.2007

Sewa Singh

versus

Dr.Santosh Kumari

.....Appellant

.....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.R.S.Sihota, Advocate for the appellant.

Mr.Amit Jhanji, Advocate for the respondent.

* * *

ORDER

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby a decree for possession has been passed in favour of the plaintiff in respect of House No.1166-A, HIG (FF), Sector 23, Faridabad, as consequence of termination of tenancy of the appellant.

It is the case of the plaintiff that provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as the Act) are not applicable to the demised premises as its construction was completed on 23.3.1995 and, thus, the premises are exempted from the Act. The suit was filed on 10.10.2002.

Both the Courts below have recorded a concurrent finding of fact that the plaintiff has proved that possession of the premises was handed over to the plaintiff on 29.3.1995 by the Housing Board after construction of the flats. Such fact is evident from the letter Exhibit PW-3/A and the certificate Exhibit PW-4. It has been further found that

Exhibit P-11 to P-14 i.e. electricity, sewerage and water connection respectively show that the said facilities were granted in respect of the flat after possession was handed over to the plaintiff and, thus, the premises was exempt from operation of the Act.

In the present appeal, the learned counsel for the appellant has relied upon the statement of PW-3 to contend that the construction of the building was completed prior to the year 1995 and, therefore, the premises cannot be said to be exempt under the provisions of the Act. However, I do not find any merit in the said argument raised by learned counsel for the appellant for the reasons that the plaintiff has produced the possession certificate and the documents to show that the electricity, sewerage and water connection were provided in the premises after the possession was handed over on 25.3.1995. In these circumstances, the building can be deemed to be constructed only when the possession was delivered to the plaintiff and necessary amenities to enjoy the premises were provided thereafter. The completing of construction cannot be meant only raising of structure, but the date on which the premises can be used. The flats were constructed by the Housing Board. Therefore, the prior to delivering of possession, it can not be taken the building was completed. It is also come on record that the premises was let out to the plaintiff vide rent note dated 9.1.1996. Therefore, the finding recorded that the building is exempt from the provisions of the Act cannot be said to be suffering from any patent illegality and irregularity.

Learned counsel for the appellant has further argued that the possession of the appellant over the premises is that as prospective vendee in pursuance of the oral agreement of sale dated 26.1.2002

whereby the appellant has paid a sum of Rs.3,00,000/- to the plaintiff. The said plea has been considered by the Courts below and negated on the ground that there is no evidence in respect of such oral agreement. It has been further found that the defendant has not been able to show the withdrawal of a sum of Rs.3,00,000/- from any bank account nor the appellant has produced any receipt in respect of payment of Rs.3,00,000/- to the plaintiff. In these circumstances, the finding recorded that the plea of oral agreement is not tenable, cannot be said to be suffering from any patent illegality or irregularity.

In view of the above, I do not find that any substantial question of law arises for consideration of this Court in second appeal.

Dismissed.

February 13, 2007
**mohinder*

(HEMANT GUPTA)
JUDGE